IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 39 OF 2002.

Shri Namdeo S. Fadte,
r/at Ekoshim, Pomburpa,
Bardez-Goa. ... Appellant.

Versus

Village Panchayat Pomburpa-
Olaulim, represented by its
Sarpanch, Pomburpa, Bardez-Goa. ... Respondent.

Mr. R.G. Ramani, Advocate for the Appellant.

Mr. J.P. Mulgaonkar, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 13th February 2003.

ORAL ORDER.

This Second Appeal has been filed by the original plaintiff, who had filed Regular Civil Suit No. 486/87/B, in the Court of Civil Judge, Junior Division, Mapusa. The learned trial Court, by its Judgment and Decree, dated 31st January 2000, had decreed the suit filed by the appellant/plaintiff and had permanently restrained the respondent/defendant from demolishing the suit shed or interfering with it. The learned trial Court, while decreeing the suit, had held that the appellant/plaintiff had not been able to prove that the suit shed was existing for over 13 years when the suit was filed. However, the learned trial Court held that the plaintiff had proved that he had applied to repair the suit shed, by his application, dated 19th November 1984 and had carried out the repairs after three months

had passed.

2. The respondent/defendant, being aggrieved by the Judgment and Decree of the learned trial Court, filed Regular Civil Appeal No. 57 of 2000, in the Court of the Additional District Judge, Mapusa. The learned lower appellate Court, by its Judgment and Decree, dated 6th November 2001, allowed the appeal and quashed and set aside the Judgment and Decree of the learned trial Court and, thus, dismissed the suit filed by the appellant/plaintiff. The appellant/plaintiff, thus, being aggrieved by the Judgment and Decree of the learned lower appellate Court, has filed the present Second Appeal.

3. The learned lower appellate Court concurred with the finding of the learned trial Court that the appellant/plaintiff had not been able to establish that the suit shed was existing for over 13 years when the suit was filed. The learned lower appellate Court then recorded a finding that the burden was on the plaintiff to establish that he had submitted an application, at Exhibit P.W.1/E, for grant of No Objection Certificate to re-construct a shed for parking his vehicle. The learned lower appellate Court appreciated the evidence of the respondent/defendant that there was no entry in the inward and outward register regarding the receipt of

the application, at Exhibit P.W.1/E, dated 19th November 1984. The learned lower appellate Court also appreciated the fact that apart from the oral evidence, the appellant/plaintiff had not examined the Secretary, to whom the application, at Exhibit P.W.1/E, had been tendered. Thus, the learned lower appellate Court came to the conclusion that the evidence led by the appellant/plaintiff in respect of tendering the application, at Exhibit P.W.1/E, dated 19th November 1984, was woefully inadequate.

4. The learned lower appellate Court had appreciated the evidence and, according to me, has rightly come to the conclusion that the appellant/plaintiff had failed to establish that he had tendered the application, at Exhibit P.W.1/E for re-construction of the shed. The appellant/plaintiff in his evidence has also not stated the name of the person to whom the said application was tendered. The appellant/plaintiff has also not examined the person who had received the said application. Thus, the learned lower appellate Court rightly came to the conclusion that there was no satisfactory evidence of tendering of the said application. The learned lower appellate Court has also dealt with the No Objection Certificate, which was issued by the respondent/defendant, at Exhibit P.W.1/G, on 24th June 1992, that is, during the pendency

of the suit. On perusal of the Judgment of the learned lower appellate Court, I do not find any perversity in the reasonings so as to warrant any interference in Second Appeal, which does not raise any question of law much less a substantial question of law.

5. In view of this, the Second Appeal is dismissed in limine with no order as to costs.

(P.V. HARDAS)
JUDGE.

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